

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOHN-FRANCIS JUDE SUPPAH,

Plaintiff,

v.

APRIL D. MCCOMB, *et al.*,

Defendants.

No. C10-5079 RJB/KLS

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

This matter comes before the Court, on the Report and Recommendation of Magistrate Judge Karen L. Strombom (Dkt. 13), and objections to the Report and Recommendation. The Court has reviewed the Report and Recommendation, objections, and the remaining record.

The Report and Recommendation contains a recitation of the facts which is adopted here by reference. Dkt. 13. The Report and Recommendation recommends dismissal of this action without prejudice as the claims are not cognizable under 42 U.S.C. § 1983, but may be pursued through a petition for habeas corpus. *Id.* Plaintiff objects to the Report and Recommendation. Dkt. 15. Plaintiff argues that he has removed his request that his conviction be vacated in his proposed amended complaint and now only seeks monetary damages for the alleged perjury of the prosecuting attorney. *Id.* Plaintiff states that he has recently filed a petition with habeas corpus. *Id.*

Plaintiff's objections are without merit. Plaintiff makes no showing that *Heck v. Humphrey*, 512 U.S. 477 (1994), does not apply as is stated in the Report and Recommendation

1 (Dkt. 13). Plaintiff has failed to state a viable claim under 42 U.S.C. § 1983. The Report and
2 Recommendation should be adopted and the case dismissed without prejudice.

3 Accordingly, the Court does hereby find and **ORDER**:

- 4 (1) The Court **ADOPTS** the Report and Recommendation (Dkt. 13).
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6 (2) This action is **DISMISSED without prejudice** prior to service for failure to state
7 a claim.
8 (3) The Clerk is directed to send copies of this Order to Plaintiff, counsel for any
9 Defendants who have appeared, and to the Hon. Karen L. Strombom.

DATED this 21st day of July, 2010.

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12 ROBERT J. BRYAN
13 United States District Judge
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